

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.87 of 2008

K.Ramakrishnan

... Appellant

Vs.

1.C.Govindhaswamy
S/o Chinnaiya Gounder

2. G.dasarathan,
S/o Govindhaswamy Gounder

3. G.Narayanan
S/o Govindhaswamy Gounder

4. G.Vengatesan,
S/o Govindhaswamy Gounder

5. G.Dharmaraj,
S/o Govindhaswamy Gounder

... Respondents

Second Appeal has been filed against the Judgment and Decree dated 09.01.2006 made in A.S.No.81 of 2005 on the file of Subordinate Judge, Gingee, confirming the Judgment and decree dated 28.02.2003 made in O.S.No.148 of 1996 on the file of the Additional District Munsiff, Gingee.

For Appellants

Mr.R.Akilesh
for Mr. S.Raghu

For Respondents

: No appearance.

J U D G M E N T

The appellant is the plaintiff in a suit for injunction. The respondents herein are the defendants therein. The plaintiff sought the relief of injunction against the defendants restraining them from interfering with his right to draw water from the suit well by installing motor pump set. The plaintiff however admitted that the defendants are also having right to draw water from the well. Hence, the very relief sought for in the suit itself is to the effect that the plaintiff should not interfere in the drawing of water jointly with the defendants.

2. The suit was resisted by the defendants by contending that the plaintiff has not come forward to deepen the well by spending some money, which was spent only by the defendants.

3. The trial Court, after considering the rival pleadings of the parties and the evidence let in by them, found that the plaintiff being the co-sharer of the suit property, namely, the well, is entitled to 1/4th right to draw water from the said well and accordingly, granted the relief of injunction restraining the defendants from interfering with his right to draw water in the capacity of 1/4th share holder. The said finding of the trial Court was confirmed by the appellate Court. The appeal was preferred by the plaintiff himself and not by the defendants.

4. Challenging the concurrent findings, the present second

appeal is filed before this Court, wherein this Court framed the following substantial questions of law.

a. In a suit for bare injunction, are the courts below correct and justified in going into the question of title?

b. Is not the question of title foreign to the scope of the suit filed for bare injunction?

5. Heard the learned counsel for the appellant. There is no representation for the respondents.

6. The plaintiff seeks the relief of injunction to protect his right to draw water from the suit well. It is an admitted case of the plaintiff that he is not the absolute owner of the suit well and on the other hand, the defendants are also having joint right over the suit well as the co-sharers. Considering the respective pleadings of the parties, both the Courts below found that the plaintiff, being the co-sharer with 1/4th right in the suit well, is entitled to draw water to that extent. Therefore, both the Courts below have granted the relief of injunction by restraining the defendants from interfering with the plaintiff's right to draw water to that extent. When the plaintiff has sought the relief of injunction only as a co-sharer and sought to prevent the defendants from interfering with such right and when such relief was granted, I do not understand as to how the plaintiff is affected to challenge such decree, especially, when the defendants have not chosen to

K.RAVICHANDRABAABU,J.

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challenge the decree granted by the trial court and confirmed by the appellate court. Therefore, in my considered view, the present appeal itself is wholly unnecessary and devoid of merits. No doubt in an injunction suit, the title to the property cannot be decided. However, it is also well settled that incidentally such issue can be gone into to certain extent only for the limited purpose to find out whether the relief of injunction as sought for can be granted or not. That was the exercise done by the Court below for granting such injunction. Therefore, I do not find any error or illegality in the concurrent decision rendered by the Courts below and thus, the substantial questions of law raised in this Second Appeal are answered accordingly and the Second appeal is dismissed. No costs.

04.10.2016

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To

1. The Subordinate Judge, Gingee.
2. The Additional District Munsiff, Gingee.

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